

# **ROAD RULES**

## **STATUTES AND CASE LAW CITATIONS**

### **TRAFFIC STOPS**

#### **AUTHORITY TO STOP VEHICLE PERIOD OF DETENTION**

I.C. 34-28-5-3

Whenever a law enforcement officer believes in good faith that a person has committed an infraction or ordinance violation, the law enforcement officer may detain that person for a time sufficient to:

- (1) inform the person of the allegation;
- (2) obtain the person's:
  - (A) name, address, and date of birth; or
  - (B) driver's license, if in the person's possession; and
- (3) allow the person to execute a notice to appear.

*D.K. v. State*, 736 N.E.2d 758 (Ind. Ct. App. 2001).

- Issue: Period of detention for traffic stop.
- Officer was justified in stopping vehicle after he saw vehicle speeding and disregarding a stop sign.
- Police officer cannot detain a person stopped for a traffic violation any longer than necessary to effectuate the purpose of the stop.
- Unless there is reasonable, articulable suspicion that criminal activity is afoot officer may not detain longer.
- Nervousness of driver is not enough to prolong stop for canine sweep.
- Neither lack of eye contact nor watching the officer justified continued detention.
- Refusal to consent did not justify prolonged detention.
- Evidence found in search after dog alert should have been suppressed.

*Ammons v. State*, 770 N.E.2d 927 (Ind. Ct. App. 2002).

- A traffic stop is akin to an investigative stop.
- An officer is only to detain the motorist stopped as necessary to complete the officer's work related to the illegality for which the motorist was stopped.

## HOW LONG AFTER VIOLATION STOP?

*Lark v. State*, 759 N.E.2d 275 (Ind. Ct. App. 2001).

- Police officer may stop vehicle upon observing a violation of an infraction.
- Fact that Lark's vehicle was not stopped until four blocks after he obstructed vehicular traffic was of no import.
- Stop was legitimate.

## LIMITATIONS ON TRAFFIC STOPS

### In Uniform or In Marked Car

I.C. 9-30-2-2

A law enforcement officer may not arrest or issue a traffic information and summons to a person for a violation of an Indiana law regulating the use and operation of a motor vehicle on an Indiana highway or an ordinance of a city or town regulating the use and operation of a motor vehicle on an Indiana highway unless at the time of the arrest the officer is:

- (1) Wearing a distinctive uniform and a badge of authority; or
- (2) Operating a motor vehicle that is clearly marked as a police vehicle;

that will clearly show the officer or the officer's vehicle to casual observations to be an officer or a police vehicle. This section does not apply to an officer making an arrest when there is a uniformed officer present at the time of the arrest.

*Bovie v. State*, 760 N.E.2d 1195 (Ind. Ct. App. 2002).

- Detective not in uniform and driving unmarked car could not legally stop suspect as a result of inoperable headlight.
- Bovie and his passenger (a known drug dealer) leaving known drug house, going to gas station and stopping there did not provide reasonable and articulable suspicion required to make an investigatory stop.

*State v. Caplinger*, 616 N.E.2d 793 (Ind. Ct. App. 1993).

- Off-duty Lapel police officer, not in uniform or marked car, called for uniformed officer after observing defendant's erratic driving.
- Officer pulled into private drive behind the defendant.
- Officer reached into defendant's car and turned off ignition.
- Hamilton County Deputy Sheriff arrived and after field sobriety tests and chemical breath test Caplinger was arrested for OWI.
- Lapel officer's actions constituted an illegal arrest. Evidence against the defendant was properly suppressed.

*Miller v. State*, 641 N.E.2d 64 (Ind. Ct. App. 1994), *trans. denied*.

- Actions by Monroe County special deputy in following female driver into parking lot and telling her that he was detaining her and then taking her keys after she admitted she had been drinking constituted “an arrest.”
- Officer not in uniform, without badge and in personal truck had no authority to arrest.

*Hatcher v. State*, 762 N.E.2d 189 (Ind. Ct. App. 2002).

- IC 9-30-2-2 permits law enforcement officer not in uniform and not in marked car to issue traffic citation if accompanied by uniformed officer(s).

## **No Jurisdictional Limitations**

*Lashley v. State*, 745 N.E.2d 254 (Ind. Ct. App. 2001).

- Mooresville officer was off-duty, but in uniform and driving his marked police car.
- Officer was authorized in stopping Lashley for speeding outside the Mooresville town limits.
- A person who commits an infraction may be detained by any law enforcement officer. There is no jurisdictional limitation.
- A lawful stop for a *bona fide* traffic violation, even if pretextual, does not convert the stop into an unconstitutional search and seizure.
- Whenever a law enforcement officer believes in good faith that a person has committed an infraction or an ordinance violation, the person may be detained long enough to:
  - inform him/her of the allegation;
  - obtain name, address and DOB or driver’s license of detainee; and
  - allow execution of notice to appear - IC 34-28-5-3

## **Ordering Driver and Passenger Out of Vehicle**

*Pennsylvania v. Mimms*, 434 U.S.106, 98 S.Ct. 330 (1977).

- Police officer may, as matter of course, order driver to exit stopped vehicle.

*Maryland v. Wilson*, 519 U.S. 408, 117 S.Ct. 882 (1997).

- Police officer may, as matter of course, order passenger to exit stopped vehicle.

## **Right of Passenger to Leave**

*Walls v. State*, 714 N.E.2d 1266 (Ind. App. 1999).

- When passenger exits vehicle stopped by law enforcement officer and walks away, police officer may not as matter of routine practice order passenger to return to vehicle.

*Tawdul v. State*, 720 N.E.2d 1211 (Ind. Ct. App. 1999).

- Police officer has right to briefly detain a passenger who exits a lawfully stopped vehicle.
- Further, officer may order passenger to return to stopped vehicle, but only long enough to make an initial assessment of the situation and alleviate any concerns the officer has for his safety, not necessarily for the entire period of the traffic stop.

## **PRETEXT STOPS**

*Mitchell v. State*, 745 N.E.2d 775 (Ind. 2001).

- Pretext stops are valid.
- Officer stopping vehicle is authorized to order driver and passenger out of vehicle.
- Reason for prolonged detention was based upon what officer saw in passenger's purse and was intended to allow police to get a search warrant.
- The test as to whether the police held Mitchell "too long" while warrant was being obtained was whether the police acted with due diligence to accomplish their purpose.
- Length of detention was not unreasonable.

*Camp v. State*, 751 N.E.2d 299 (Ind. Ct. App. 2001).

- Pretext stops are valid.
- Citing *Callahan v. State*, 719 N.E.2d 430 (Ind. Ct. App. 1999) the Court said "The Court recently held with some reluctance that a lawful traffic stop, even if pretextual, is not, without more, an unreasonable search and seizure."

## **SEAT BELT STOPS**

*Baldwin v. Reagan*, 715 N.E.2d 332 (Ind. 1999).

- Police officer can make valid traffic stop if officer observes seat belts not being used.

*Morris v. State*, 732 N.E.2d 224 (Ind. Ct. App. 2002).

- A traffic stop based upon the failure to wear a seatbelt, standing alone, does not provide reasonable suspicion for the police to unilaterally expand their investigation and "fish" for evidence of other possible crime.
- An officer may, however, expand his investigation subsequent to a stop if other circumstances arise after the stop which independently provide the officer with reasonable suspicion of other crimes.
- Reasonable suspicion exists when the facts known to the officer, together with the reasonable inferences arising from such facts would cause an ordinarily prudent person to believe that criminal activity has been occurring or is about to occur.
- In this case, the traffic stop was justified in that the motorist was not wearing his seatbelt.
- Failure to provide license was an independent circumstance which provided suspicion that driver might not have valid license.
- Smell of alcoholic beverage was another independent circumstance which supported officer's

reasonable suspicion that Morris was driving under the influence.

*Trigg v. State*, 725 N.E.2d 446 (Ind. Ct. App. 2000).

- If after valid seat belt stop circumstances arise creating a reasonable suspicion of other crimes, further reasonable inspection, search or detention is permitted.

*State v. Price*, 724 N.E.2d 670 (Ind. Ct. App. 2000).

- Reasonable belief that motorist is not wearing seat belt justifies traffic stop.

## **ANONYMOUS TIPS**

*Bogetti v. State*, 723 N.E.2d 876 (Ind. Ct. App. 2000).

- Restaurant patron's information provided to police officers face-to-face that semi-driver who had just left the restaurant "may be intoxicated" constituted reasonable suspicion justifying police officer stopping semi.
- Anonymous or unidentified informants can supply information sufficient to satisfy reasonable suspicion justifying investigatory stop.
- The tip in this case contained specific information regarding the vehicle defendant was driving was sufficient to give rise to a reasonable suspicion that the white semi was being operated by an impaired driver.
- This opinion does advise that police officers receiving such tips should obtain name, address and telephone number of informant, when possible.

*Washington v. State*, 740 N.E.2d 1241 (Ind. Ct. App. 2000).

- Off-duty deputy sheriff received information through dispatch that anonymous caller had reported possible drunk driver in a black Cadillac with a white top southbound on I-65. License plate number was also provided.
- Neither the identification nor the reliability of the anonymous caller in this case was known or subsequently determined.
- Court will look at "totality of the circumstances" in determining whether police had reasonable suspicion to believe criminal activity afoot.
- Court of Appeals held that anonymous telephone tip absent any independent indicia of reliability or officer-observed confirmation of caller's prediction of defendant's future behavior is not enough to permit police to detain citizen and subject him/her to a *Terry* stop.
- In that there was no evidence of officer observed behavior of Washington's driving nor any detailed predictions by anonymous caller of Washington's future behavior or other indicia of reliability that would reflect knowledge on the part of the anonymous caller, Washington's conviction was reversed.

*Berry v. State*, 766 N.E.2d 805 (Ind. Ct. App. 2002).

- Police officer was unable to verify identity of caller who reported disturbance at an Indianapolis Burger King.
- Suspicion arose solely from anonymous call.

- Caller made no predictions of future actions and reported no inside information.
- Court of Appeals rejected State's assertion that caller put his anonymity at risk by staying on the telephone line as the dispatcher relayed the information he was providing to police officers.
- Officer's stop was deemed improper in that anonymous call lacked sufficient indicia of reliability.

*Wells v. State*, 772 N.E.2d 487 (Ind. Ct. App. 2002).

- An anonymous tip, without more, is not enough to support the reasonable suspicion necessary for a *Terry* stop.
- Anonymous tips must be accompanied by specific indicia of reliability or must be corroborated by a police officer's own observation in order to pass constitutional muster.
- The tipster in this case gave specific information regarding the color, make and license plate number that the stopping officer was able to verify.
- The officer also corroborated the information provided by the anonymous tip with respect to the manner in which Wells was driving.
- Viewing the totality of the circumstances it was clear that the officer had the requisite suspicion necessary to stop Wells' vehicle and investigate.

*State v. Eichholtz*, 752 N.E.2d 163 (Ind. Ct. App. 2001).

- Informant called dispatch to report the defendant's erratic driving.
- Caller provided description of defendant's car, its location, and the caller's name and a description of the car he was driving.
- Court of Appeals determined that caller in this case was not totally anonymous. Caller provided his name and a description of his car and stayed behind the defendant's car until the police stopped Eichholtz.
- Caller identified himself in such a manner that he could have been held legally responsible if police later determined that he had filed a false police report.
- Officer had reasonable suspicion justifying his stop of the defendant's vehicle.

*Francis v. State*, 764 N.E.2d 641 (Ind. Ct. App. 2002).

- Informants told police that a relative's car had been stolen and that the defendant was driving the car.
- Informants who were able to tell the police where the car would be found and that there was an open arrest warrant for the defendant, did not want their names listed in any police report.
- Police officer confirmed existence of open arrest warrant and found car where informants had told him it would be.
- As a general rule, an anonymous tip alone is not likely to constitute the reasonable suspicion necessary for a valid *Terry* stop unless significant aspects of the tip are corroborated by the police.
- *Frances* distinguished from *Washington* (cited above) in that the police officer in the *Frances* case did not act solely on informants tip.
- Informants provided specific information to police officer in person including a detailed description of the car, its location and that there was an open arrest warrant for the defendant who currently had the vehicle in his possession.
- Reasonable suspicion existed to justify the officer's investigative stop. There was no Fourth

Amendment violation.

*State v. Glass*, 769 N.E.2d 639 (Ind. Ct. App. 2002).

- “Reasonable suspicion” cannot be readily reduced to a neat set of rules. In determining whether reasonable suspicion exists, court will examine the totality of the circumstances.
- Facts known to the police officer at the moment of the stop together with any reasonable inferences arising from those facts must be such as would cause an ordinary person to believe that a criminal act has occurred, or is about to occur.
- The fact that a named caller with an untested reputation called the police is not in itself enough to establish reasonable suspicion.
- An investigatory stop may be based on the collective information known to law enforcement as a whole. But, in this case, the caller’s reliability was unknown at the time of the call and was never confirmed.
- [Case distinguishes face-to-face informing and anonymous telephone call].

*Johnson v. State*, 766 N.E.2d 426 (Ind. Ct. App. 2002).

- Cooperative citizens are to be distinguished from anonymous tipsters.
- Witnesses gave investigating officer their names but indicated that they did not want their names included in the police report.
- It did not appear that witnesses were trying to hide their identities so as to avoid the repercussions of a false report.
- Information given provided sufficient probable cause to support arrest of Johnson.

**BOTTOM LINE: GET IDENTIFYING INFORMATION FROM TIPSTER AS WELL AS BASIS FOR THE INFORMATION CONVEYED AND TRY TO CORROBORATE!!**

## **SEARCHES**

### **“Are There Drugs or Weapons in the Car?” “Can I Look?”**

*Lockett v. State*, 747 N.E.2d 539 (Ind. 2001).

- Question of driver as to whether there were any weapons on the driver’s person or in his vehicle did not unreasonably extend an otherwise valid detention.
- Further, driver in this situation did not have right to *Miranda* warnings prior to answering the officer’s question.
- Federal circuits are split on whether officer may ask questions unrelated to the reason for the stop.
- In Indiana, an officer may ask a stopped driver if he has weapons on his person or in his vehicle if doing so does not extend an otherwise lawful detention.

## Validity of Consent

*Callahan v. State*, 719 N.E.2d 430 (Ind. Ct. App. 1999).

- Drug interdiction officer issued warning and told Callahan he was free to go.
- Officer then told defendant that he was an interdiction officer traveling with a canine unit and that the driver did not have to cooperate. The officer then asked Callahan if he could look in his car for weapons and narcotics.
- The Court of Appeals said, “Although we too are troubled by the increasingly common practice of police stopping vehicles for minor traffic offenses and seeking consent to search with no suspicion whatsoever of illegal contraband, all in the name of the war on drugs, we are unwilling under the facts of this case to say . . . State Constitution prohibits [police] from doing so.”

*Camp v. State*, 751 N.E.2d 299 (Ind. Ct. App. 2001).

- Camp’s consent to search was voluntary.
- Factors to be considered in determining whether a consent to search is voluntary include:
  - Whether the person was advised of his *Miranda* rights before request to search;
  - The person’s degree of education and intelligence;
  - Whether the person was advised of right not to consent;
  - Whether person has had previous encounters with law enforcement;
  - Whether officer made any express or implied claims of authority to search without consent;
  - Whether officer engaged in any illegal action prior to his request;
  - Whether the person was cooperative; and
  - Whether the officer was deceptive about his identification or the purpose for the search.
- Not at issue (because consent was deemed valid) but discussed, was the validity of seeking consent to search during traffic stops and pat-downs.

*Ackerman v. State*, 774 N.E.2d 970 (Ind. Ct. App. 2002).

- Stepping aside after opening the door to be faced unexpectedly with the presence of the authorities may be a retreat and not a manifestation of consent to enter.
- But, when person opening the door knows that a police officer is outside, opening the door and stepping aside will be interpreted as an act of invitation to enter.

## Limitations on Scope of Consent

*Pinkney v. State*, 742 N.E.2d 956 (Ind. Ct. App. 2001).

- A consent to search is valid only if kept within the scope of the consent given.
- The expressed object of the officer’s search in this case was drugs and weapons.
- When Pinkney consented, the consent was understood to include the pat-down of Pinkney’s outer clothing including his pants pocket where marijuana was found.

*Friedel v. State*, 714 N.E.2d 1231 (Ind. Ct. App. 1999).

- Male driver consented to search of his vehicle.
- Deputy Sheriff conducting the search found a purse on car's back seat near where female passenger had been sitting.
- Court of Appeals concluded that it was unreasonable for deputy to believe that he had consent to search the purse.
- Friedel was the only female in the car. In that purse is usually not a jointly owned or used item, deputy should not have searched purse based on male driver's consent to search of the car.

*Norris v. State*, 732 N.E.2d 186 (Ind. Ct. App. 2000).

- Consent to search may be given by either person whose property is to be searched or by third person with common authority over or sufficient relationship to the premises to be searched.
- Authority to give consent to search rests on mutual use of property by persons generally having joint access or control such that it would be reasonable to recognize each co-inhabitant's right to permit inspection in his own right.
- The question is whether a reasonable person in the police officer's position would believe that the person giving consent to search had authority to consent.
- Driver's consent to search of vehicle could not be interpreted to include consent to search backpack on back seat next to where back seat passenger had been sitting.
- Police officer should have ascertained to whom the back pack belonged before opening it.
- It was reasonable to think that the back pack was owned by other than the driver and unreasonable to think back pack would be an item of shared ownership.
- In ambiguous circumstances, police officers must make reasonable inquiries as to ownership of item they want to search.
- Search of back pack was unreasonable and evidence found in back pack should have been suppressed.

*Arcuri v. State*, 775 N.E.2d 1095 (Ind. Ct. App. 2002).

- Owner of home had authority to consent to search of loft area in her home where Arcuri had been staying.
- Arcuri had no reasonable expectation of privacy in the area searched.

*Smith v. State*, 713 N.E.2d 338 (Ind. Ct. App. 1999).

- Driver consented to search of his car for guns, drugs, money and illegal contraband.
- Consent to search is strictly limited to consent given and is reasonable only if kept within the bounds of that consent.
- Officer's search of any containers in the automobile in which guns, drugs, money or contraband could have been found was reasonable, including cellular telephones found therein.
- Officer's check of phone's memory, however, exceeded the scope of the driver's consent to search and was therefore, invalid.
- Law enforcement officers cannot obtain consent to search on the representation that they intend to look only for certain specified items and subsequently use that consent as a license to conduct a general exploratory search.

## Pirtle Warning - If In Custody

*Pirtle v. State*, 323 N.E.2d 634 (Ind. Sup. Ct. 1975).

- Decision to consent to an unlimited search is a vital stage in the prosecutorial process.
- A person asked to give consent to search while in police custody is entitled to the presence and advise of counsel before deciding whether to give consent.
- Right may be waived, but warning must be given.

### **PIRTLE WARNING**

1. You have the right to require that a search warrant be obtained before any search of your residence, vehicle or other premises.
2. You have the right to refuse to consent to any such search.
3. You have the right to consult with an attorney prior to giving consent to any such search.
4. If you cannot afford an attorney, you have the right to have an attorney provided for you at no cost.

**After the warnings are given and in order to secure a waiver, the following questions should be asked and an affirmative reply received to each question.**

1. Do you understand each of the rights I have explained to you?
2. Having these rights in mind, are you willing to permit a complete search of your [state place or thing to be searched]?

*Ammons v. State*, 770 N.E.2d 927 (Ind. Ct. App. 2002).

- In that defendant was not under arrest at time he consented to search of her car, no *Miranda* required prior to request to search.
- Defendant did not allege any illegal police action or deception. Consent was voluntarily given.

*West v. State*, 755 N.E.2d 173 (Ind. Ct. App. 2001).

- The fact that West was subsequently taken to the police station and his vehicle towed did not entitle him to *Pirtle* warnings when consent was given prior to his being taken into custody.

*Ackerman v. State*, 774 N.E.2d 970 (Ind. Ct. App. 2002).

- Field sobriety testing is administered in order that police may discover evidence of impairment.
- Field sobriety tests are clearly searches under the Indiana Constitution.
- In that field sobriety testing is not intrusive and is unlikely to reveal anything other than impairment, it would not serve the purpose of the *Pirtle* Doctrine to extend that doctrine to apply to field sobriety testing.
- Police are not required to advise a person in custody that she may consult with an attorney prior to taking field sobriety tests.

## **Searches - Without Consent**

### **Automobile Exception**

*Carroll v. U.S.*, 267 U.S. 132, 45 S.Ct. 280 (1925).

- Warrantless search of an automobile based upon probable cause to believe that the vehicle itself contains evidence of a crime, in light of the exigency arising out of mobility and likely disappearance of the vehicle, does not violate the Fourth Amendment.

*Sanders v. State*, 576 N.E.2d 1328 (Ind. Ct. App. 1991).

- Commission of traffic offense, in and of itself, does not constitute probable cause to search a stopped vehicle.

*U.S. v. Ross*, 456 U.S. 798, 102 S.Ct. 2157 (1982).

- *Carroll* Doctrine includes search of containers or packages found in vehicle.
- If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that might conceal the object of the search.
- Closed containers in vehicles can be searched without a warrant because of their presence within the vehicle.

*California v. Acevedo*, 500 U.S. 565, 111 S.Ct. 1982 (1991).

- Probable cause to believe that a vehicle contains contraband justifies a warrantless search of the vehicle.
- Probable cause that a container within a movable vehicle contains contraband justifies warrantless search of that container.
- Probable cause that a specific container contains contraband does not justify a warrantless search of the entire vehicle.
- Search may be conducted immediately or if probable cause existed at time of stop, a reasonable time thereafter.

*Wyoming v. Houghton*, 526 U.S. 295, 119 S.Ct. 1297 (1999).

- Police officers with probable cause to search a vehicle may inspect passenger belongings capable of concealing the object of the search.

*Green v. State*, 647 N.E.2d 694 (Ind. Ct. App. 1995).

- Probable cause to believe an automobile contains fruits or instrumentalities of a crime, due to the inherent mobility of the vehicle, justifies a warrantless search.
- But, where securing a search warrant is reasonably practicable, get the search warrant.
- Law enforcement knew two days prior to stopping the defendant's vehicle that he would be transporting cocaine at the time he was stopped.
- It was practicable to get a search warrant. Warrant should have been secured.
- Denial of motion to suppress reversed.

*Cody v. State*, 702 N.E.2d 364 (Ind. Ct. App. 1998).

- In the course of a traffic stop, the defendant admitted to the stopping officer that he had earlier smoked marijuana after the officer told the defendant he smell marijuana.
- Officer had probable cause to believe defendant's truck contained marijuana based on smell and defendant's admission.

*Edwards v. State*, 768 N.E.2d 506 (Ind. Ct. App. 2002).

- Inherent mobility of auto alone justifies a warrantless search.
- There is no separate exigency requirement.
- In this case, however, the defendant's truck was impounded and the Court of Appeals found no exigent circumstances justifying warrantless search.

*Johnson v. State*, 766 N.E.2d 426 (Ind. Ct. App. 2002).

- Police had probable cause to believe that a gun fired just minutes earlier at a White Castle restaurant was hidden under the hood of the white Cadillac driven by Johnson.
- If others had been permitted to drive the car away after Johnson's arrest the evidence would have been lost, or worse yet, the gun could have fallen out and someone could have been injured.
- The existing probable cause would have justified the issuance of a warrant and given the mobility of Johnson's vehicle the police were justified in searching his car without a warrant.

*Scott v. State*, 775 N.E.2d 1207 (Ind. Ct. App. 2002).

- A mobile vehicle can be searched if there is probable cause to believe that it contains contraband.
- When the vehicle is no longer inherently mobile, however, and it is practicable to get a search warrant, a search warrant should not be obtained.
- Scott's car was not blocking traffic or any exit or entrance to the school on whose lot it was parked. Scott was detained in handcuffs. There was neither a shortage of time nor any emergency making the automobile exception applicable.
- Search was unconstitutional under both federal and state constitutional analysis.

### **Sniff By Drug Dog = Probable Cause**

*Kenner v. State*, 703 N.E.2d 1122 (Ind. Ct. App. 1999).

- Smell of marijuana by officer trained in its detection can satisfy the reasonable suspicion requirement justifying an investigatory stop while trained narcotics dog is brought to the scene of the stopped vehicle.
- Walk around legally stopped vehicle with trained narcotics dog is not a search.
- Dog alert provides necessary probable cause to search the vehicle.
- Question of whether vehicle was detained too long was answered by determination that law enforcement personnel diligently pursued getting a dog to the scene.
- Detention for 45-minutes was not unreasonable.

*Rios v. State*, 762 N.E.2d 153 (Ind. Ct. App. 2002).

- Fact that package was sent next day mail, had handwritten label, was paid for in cash and smelled of laundry sheets did not provide probable cause for search warrant or seizure of defendant's package.
- The alert of trained narcotics canine, however, was enough.
- No level of suspicion was necessary to justify canine sniff of package. (Not a search).
- When package is only briefly detained for further investigation and its delivery is not substantially delayed there is no seizure.
- Case provides text of anticipatory search warrant approved by the Court of Appeals.

*Bradshaw v. State*, 759 N.E.2d 271 (Ind. Ct. App. 2001).

- Canine sweep is not a search.
- If canine sweep is done while traffic stop is still in progress it does not matter whether the officer had reasonable, articulable suspicion that criminal activity was afoot. (This was not an investigative stop).

*Sebastian v. State*, 726 N.E.2d 827 (Ind. Ct. App. 2000).

- Smell of burnt marijuana emanating from passenger compartment of lawfully stopped vehicle along with discovery of marijuana pipe in driver's pocket during lawful pat-down gave rise to probable cause to search defendant's vehicle.
- In this opinion the Court of Appeals noted that the majority of jurisdictions that have considered the question have concluded that probable cause to search a vehicle may exist when the odor of marijuana is the only factor indicating the presence of contraband in the vehicle.

### **Sniff By Human = Probable Cause**

*Vasquez v. State*, 741 N.E.2d 1214 (Ind. Sup. Ct. 2001).

- A chemical analysis is one way of making identification of a compound, but not the only way.
- Persons experienced in the area may be able to identify cigarette smoke, marijuana smoke and even toluene.
- Police officers' identification of compound as toluene provided sufficient proof that substance was toluene.

*State v. Hawkins*, 766 N.E.2d 749 (Ind. Ct. App. 2002).

- When trained and experienced police officer detects the strong and distinctive odor of burnt marijuana coming from a stopped vehicle, officer has probable cause to search the vehicle under both the Fourth Amendment and the Indiana Constitution.

## Search Incident To Arrest

*Gibson v. State*, 733 N.E.2d 945 (Ind. Ct. App. 2000).

- In determining whether search incident to arrest was proper, courts have to answer two questions affirmatively:
  - was the arrest legal?
  - was the search within the scope of a search incident to arrest?
- The fact that the person searched was not told that he/she was under arrest, does not invalidate a search incident to arrest if probable cause to arrest exists.
- Neither is the subjective belief of the arresting officer that he may not have probable cause to arrest determinative.
- If the arresting officer had knowledge at the time of the arrest of facts and circumstances that would warrant a reasonable man's belief that the suspect committed the crime in question, search incident to arrest is legal.
- Scope of search incident to arrest includes the arrestee and the area within the arrestee's immediate control (Area in which arrestee could reach for weapons or to destroy evidence).
- When occupant of automobile is lawfully arrested, arresting officer may contemporaneously with arrest search passenger compartment of car in which arrestee is seated.
- When defendant was stopped and arrested outside of the vehicle, interior of the vehicle was no longer within arrestee's immediate control and interior could not be legally searched incident to arrest.

*Edwards v. State*, 768 N.E.2d 506 (Ind. Ct. App. 2002) (on rehearing).

- Edwards was out of his truck and pumping gas when police approached him.
- If police had stopped Edwards while he was driving, they might have been justified in searching the interior of his vehicle.
- In this instance, however, Edwards was outside his vehicle.
- Search was not incident to arrest.

*Wilson v. State*, 754 N.E.2d 950 (Ind. Ct. App. 2001).

- Interruption of freedom of the accused and restraint upon his/her liberty is an "arrest."
- Failure of the arresting officer to tell the arrestee that he/she is under arrest does not invalidate a search incident to arrest.
- The subjective belief of the officer has no legal effect on the validity of a search incident to arrest.
- Defendant was lawfully arrested for Driving While Suspended.
- Search was proper.

*Van Pelt v. State*, 760 N.E.2d 218 (Ind. Ct. App. 2001).

- Van Pelt was not arrested until three weeks after he was stopped.
- The critical issue, the Court of Appeals said, was not when the arrest occurred but when the probable cause to arrest occurred.
- So long as probable cause exists to make an arrest, the fact that the person is not actually arrested right then will not invalidate a search under the search incident to arrest exception to the search warrant requirement.

- A police officer's subjective belief as to whether he has probable cause to arrest is of no legal effect.
- The officer's actual knowledge of objective facts and circumstances is determinative.
- The officers had probable cause to arrest Van Pelt so the pat-down incident to arrest was justified.

### **Impound and Inventory**

*Bartruff v. State*, 706 N.E.2d 225 (Ind. Ct. App. 1999).

- In determining whether evidence found during inventory of impounded vehicle is admissible, court must first determine whether impound of vehicle was warranted.
- To support impound of vehicle State must show that:
  - Police officer believed that vehicle posed some threat of harm to the community or itself was imperiled consistent with objective standards of sound policing; and
  - Police officer's decision to combat that threat by impounding the vehicle was in keeping with established department routine or regulation.
- Impound of Bartruff's vehicle was warranted.
- Inventory of vehicle's contents by trooper before vehicle was towed was not consistent with ISP standard operating procedures, however.
- Inventory search was mere pretext and violative of Fourth Amendment and defendant's motion to suppress evidence found in car should have been granted.

*Ratliff v. State*, 770 N.E.2d 807 (Ind. Sup. Ct. 2002) *on transfer*

- Impound of vehicle is proper and warranted when part of routine administrative caretaking function of police or authorized by statute.
- For impound to qualify as part of community caretaking function, State must demonstrate that:
  - the belief of the officer that the vehicle posed a threat of harm to the community or was itself imperiled was consistent with objective standards of sound policing; and
  - the decision to combat the threat or harm by impounding the vehicle was in keeping with established department routine or regulation.
- Removal and impound of Ratliff's car was consistent with ISP guidelines for the handling of abandoned vehicles.
- Impound and inventory proper.

*Edwards v. State*, 762 N.E.2d 128 (Ind. Ct. App. 2002).

- In determining whether an inventory search was proper the first question to be answered is whether the impound was proper.
- The officer must first believe that the vehicle posed some threat or harm to the community, that it was itself imperiled consistent with objective standards of sound policing, or that the law required impoundment.
- Secondly, the decision to take action to combat that threat by impounding the vehicle must be in keeping with established departmental routine or regulation.
- In that the license plate on the vehicle was expired impoundment was justified.
- More is required to prove that an impound was done pursuant to standard police procedures

- than mere testimony that the search was conducted as a routine inventory.
- The impound must be pursuant to established and routine departmental procedures which are consistent with the protection of the police from potential dangers and false claims of lost or stolen property and protection of the property of the accused.
- Search was not a valid inventory search.

## **PAT-DOWN FOR WEAPONS**

*Tumblin v. State*, 736 N.E.2d 317 (Ind. Ct. App. 2000).

- Generalized suspicion that an individual represents a threat to a law enforcement officer's safety does not authorize a pat-down of that individual.
- For a pat-down to be justified there must be present articulable facts to support a reasonable belief by the officer that the particular individual is armed and dangerous.
- Knowledge that an individual carries a weapon or was previously arrested on a weapons charge satisfied such a reasonable belief and supports a pat-down of the individual.
- Acting aggressively or in a hostile manner may cause an officer to reasonably fear for his safety.
- Mere "nervousness," turning away from the police officer, or avoiding eye contact does not justify a pat-down for weapons.
- In that there was no evidence of hostility or threatening the stopping officer or that the defendant's "fidgiting" included furtive hand movement in an area where a gun could have been hidden, the pat-down of Turbin was not justified.

*Trigg v. State*, 725 N.E.2d 446 (Ind. Ct. App. 2000).

- An officer is justified in doing a pat-down for weapons only if the officer reasonably believes that the suspect to be patted down is armed and dangerous.
- The officer need not be absolutely certain that the individual is armed.
- Defendant's nervous actions and fidgiting near the seat where he was sitting as if he was trying to hide something justified the officer's pat-down.

*Mitchell v. State*, 745 N.E.2d 775 (Sup. Ct. 2001).

- Traffic stop does not justify pat-down of persons in car stopped.
- Law enforcement officer may only pat-down the driver and/or any other passenger in the vehicle stopped if he/she has a reasonable suspicion that the person patted-down may be armed and dangerous.
- Officer must be able to point to specific and articulable facts which taken together with rational inferences arising from those facts that would reasonably warrant the pat-down of the individual.
- Nervousness, followed by relief when told of the reason the defendant was stopped, did not justify pat-down of a driver stopped for a traffic violation.

*Williams v. State*, 754 N.E.2d 584 (Ind. Ct. App. 2001).

- Officer had right to stop Williams due to traffic violation.
- Officer was justified in reasonable fear for his safety and pat-down was warranted.

- Plain feel doctrine authorized officer's seizure of cocaine.
- Determination that seizure of contraband based on plain feel doctrines was legal required finding that:
  - contraband was detected during the initial pat down for weapons (rather than during further search); and
  - identification of contraband was readily apparent.

*Wilson v. State*, 745 N.E.2d 789 (Ind. 2001).

- *Terry v. Ohio* permits pat-down of an individual if the stopping officer has reason to believe he is dealing with an armed or dangerous individual.
- Officer need not be absolutely certain individual is armed.
- Issue is whether reasonably prudent man in the circumstances would be justified in the belief that his safety or that of others was in danger.
- Officer's authority to conduct a pat-down is dependent upon the nature and extent of his particularized concern for his and others safety.
- When police officer places a person in his/her patrol car there is a significantly heightened risk of danger.
- It is reasonable to pat-down detainee prior to placing motorist in police car.
- Justifications for placing detainee in police car include:
  - inclement weather;
  - lack of available lighting for paperwork;
  - need to access equipment with detainee; and
  - transport to jail for certified breath test.
- Actions by officer in this case were not the least intrusive available to verify or dispel officer's suspicions regarding the defendant's state of intoxication.
- The Indiana Supreme Court declined to hold that the Fourth Amendment permits police routinely placing traffic stop detainees in a police car if this means subjecting the detainee to a pat-down frisk.
- With no particularized suspicion of dangerousness and no necessary basis for placing Wilson in the police car, pat-down violated the Fourth Amendment.

*Ammons v. State*, 770 N.E.2d 927 (Ind. Ct. App. 2002).

- Pat-down of stopped motorist was not adequately supported by officer safety concerns.
- Stopping officer had no reason to believe that he was dealing with an armed and dangerous man.
- Pat-down was not justified. Cocaine found during pat-down should have been suppressed.

*Rybolt v. State*, 770 N.E.2d 935 (Ind. Ct. App. 2002).

- The fact that the stopping officer was alone at the time he stopped the defendant and that the officer believed that individuals who use narcotics also carry weapons did not constitute a reasonable and particularized suspicion that Rybolt was armed and dangerous.
- Pat-down was unreasonable and marijuana seized should have been suppressed.

*Abel v. State*, 773 N.E.2d 276 (Ind. Sup. Ct. 2002).

- Police officers are justified in relying on information broadcast by other officers in deciding

- whether a suspect may be armed and dangerous.
- Another officer had broadcast that he thought that a robbery had just occurred and was about to occur.
- Considering the early morning high speed chase by car and the foot chase that followed, a reasonably prudent officer would have been warranted in the belief that his safety or that of others was in danger.

*Wright v. State*, 766 N.E.2d 1223 (Ind. Ct. App. 2002).

- Officer was justified in believing that Wright was reaching around in his car for a weapon. Pat-down was therefore warranted.
- An object immediately recognized as contraband by the officer doing a legitimate pat-down may be seized under the “plain feel” doctrine.
- The warrantless seizure of cocaine was lawful.

*Smith v. State*, 780 N.E.2d 1214 (Ind. Ct. App. 2003).

- If during lawful pat-down of outer clothing for the safety of the officer he feels an object whose contour or mass makes its identity immediately apparent to the officer, if contraband, may be lawfully seized.
- Contraband must have been detected during an initial search for weapons rather than during a further search, and
- The identity of the item must be immediately apparent to the officer.
- The testimony offered in this case, taken as a whole, did not suggest that the trooper had to actually manipulate the object detected before he was able to determine that it was contraband.
- The trial court did not err in denying Smith’s Motion to Suppress the drugs found in Smith’s pocket.

## **CLASSIFICATIONS OF POLICE-CITIZEN INTERACTION**

### **WHEN DOES THE FOURTH AMENDMENT APPLY?**

#### **THREE CLASSIFICATIONS: POLICE-CITIZEN INTERACTION**

*Overstreet v. State*, 724 N.E.2d 661 (Ind. Ct. App. 2000).

- Consensual Encounter - casual and brief inquiry of a citizen that involves neither an arrest nor a stop.
  - so long as the person questioned is free to disregard a police officer’s question and walk away, there has been no intrusion upon the person’s liberty so as to require some particularized and objective justification for the interaction.
- Investigative Detention -
  - Law enforcement officer without warrant or probable cause, may briefly detain an individual for investigatory purposes if based on specific and articulable facts, the officer has a reasonable suspicion that criminal activity “may be afoot.” [*Terry v.*

*Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968)].

- Probable Cause to Arrest
  - Facts and circumstances within the knowledge of the officer is sufficient to warrant belief by a person of reasonable caution that an offense has been committed and that the person to be arrested committed the offense.
- Period of detention at time of traffic stop should only be long enough to get vital information and issue a citation.
- To detain for a longer period of time there must be other circumstances justifying that prolonged detention.
- Factors to consider in determining whether encounter is consensual or investigatory include:
  - Threatening presence of several law enforcement officers.
  - Display of weapon by the police officer.
  - Physical touching of the citizen by the police officer.
  - Use of language or tone of voice indicating compliance with request might be compelled.
- Overstreet was not stopped. (He was in a gas station parking lot using an air hose). The officer simply questioned him about his earlier actions at a mail box. This was deemed to be nothing more than a consensual encounter. No Fourth Amendment implication.

*State v. Carlson*, 762 N.E.2d 121 (Ind. Ct. App. 2002).

- Only when a law enforcement officer by means of physical force or show of authority has in some way restrained the liberty of a citizen has a seizure occurred.
- An encounter is not a detention under the Fourth Amendment unless the actions of the officer were so intimidating as to demonstrate that a reasonable person would have believed that he/she was not free to leave.
- If person encountered refuses to answer question(s) posed by officer and police officer takes additional steps to elicit an answer, Fourth Amendment then imposes at least a minimal level of objective justification to validate the detention or seizure.
- Trooper parked car behind and to side of defendant's car parked on truck stop parking lot. Officers questions and statement including "How you doing?" explanation of reason for encounter, and "would you submit to a portable breath test?" did not constitute a seizure and there was no Fourth Amendment implication at that point.

*Dowdell v. State*, 747 N.E.2d 564 (Ind. Ct. App. 2001).

- Police officer drove marked police car to within ten to fifteen feet of man on sidewalk after which officer summoned man to police car.
- Reasonable person at that point would not assume that he could just walk away.
- Evidence supported conclusion that defendant's compliance with officer's demands rendered encounter not consensual but investigative.
- Stop of Dowdell was illegal and evidence obtained pursuant to stop should have been suppressed.

*Crabtree v. State*, 762 N.E.2d 241 (Ind. Ct. App. 2002).

- Police officer's command that Crabtree put his hands in the air and placement of handcuffs on Crabtree when he did not comply, turned consensual encounter into investigatory stop.
- Investigatory stop requires that police officer have a reasonable, articulable suspicion that

criminal activity is afoot.

- Presence in high crime area alone is not enough to support an investigatory stop.
- An anonymous tip alone does not constitute reasonable, articulable suspicion.
- Suspect next to car with door open; located in area from which complaint of loud noise had come, at 4:30 a.m. constituted reasonable articulable suspicion and detention was proper.

*Wales v. State*, 768 N.E.2d 513 (Ind. Ct. App. 2002).

- Following robbery in New Albany, two police officers stationed themselves beside I-64 watching for suspect.
- Officers stopped the defendant because he was a Black male with a round face, appeared to be wearing a black leather jacket (matched the description of the robber); the timing of his arrival at the officers' location was right; and he was driving a yellow Cadillac (description of car used in robbery in the area on the previous night).
- Officers had reasonable and articulable suspicion sufficient to justify an investigatory stop.
- Stop comported with requirements of the Fourth Amendment.

*Bovie v. State*, 760 N.E.2d 1195 (Ind. Ct. App. 2002).

- The fact that Bovie and his passenger (a known drug dealer) were seen leaving a known drug house did not provide reasonable and articulable suspicion required to justify an investigatory stop.

*Finger v. State*, 769 N.E.2d 207 (Ind. Ct. App. 2002).

- What begins as a consensual encounter may become an investigatory stop.
- In the course of a consensual encounter police officer is justified in asking for driver's license or other identification.
- Consensual encounter becomes an investigatory stop, however, when the law enforcement agent retains the individual's license or other identification.
- Evidence recovered should have been suppressed.

*Green v. State*, 719 N.E.2d 426 (Ind. Ct. App. 1999).

- Nothing, other than the defendant's presence in area known to law enforcement officer to be area where marijuana had been earlier stored and fact that it was marijuana harvest season, suggested that Green was involved in marijuana cultivation and/or distribution.
- Detention of defendant was an investigatory stop.
- Facts and circumstances known to stopping officer did not justify investigative stop.

*Williams v. State*, 477 N.E.2d 96 (Sup. Ct. 1985), *reh'ing denied*

- Factors that State argued justified the defendant's detention were: the late hour, the characteristics of the neighborhood (a high crime area), and that the defendant was carrying an unidentifiable item under his arm.
- None of these factors alone justified police intrusion, and under the circumstances of this case the Court did not find that even the combination of these factors justified the stop.
- Investigatory stop exceeded constitutional limits.

*Bentley v. State*, 779 N.E.2d 70 (Ind. Ct. App. 2002).

- Twenty-year veteran of police force testified Bentley was in area where much drug dealing occurred.
- The officer recognized Bentley as a person he had earlier arrested on drug charges.
- Bentley and another man were kneeling in front of a parked truck and Bentley was handing the second man a bag containing a pair of socks.
- Police officer's testimony was that he knew from experience that street people often sold drugs contained in a bag with an item of clothing.
- The officers in this case had a reasonable and articulable suspicion that criminal activity was afoot so as to justify their investigation into what they observed.
- If the officer had relied solely on the fact that Bentley was in a high-crime area or that he believed that he had arrested Bentley for drugs before, the stop/detention would not have been justified.

*Jefferson v. State*, 780 N.E.2d 398 (Ind. Ct. App. 2002).

- Look to totality of the circumstances in determining whether there exist reasonable and articulable facts that together with the reasonable inferences arising therefrom would permit an ordinary person to believe that criminal activity was afoot.
- Belief must be more than a hunch of the officer.
- In this case the only reason the officers could give for detaining Jefferson was that she had been parked in the neighborhood twice in a short period of time and that a group of people had gathered around her car the second time.
- This was an investigatory stop, not a consensual encounter, and as such was not justified. Jefferson was illegally seized, the Court concluded.

*Arcuri v. State*, 775 N.E.2d 1095 (Ind. Ct. App. 2002).

- The determination of whether an investigatory stop is reasonable is a two-step inquiry.
- First the Court will determine whether the officer's actions were justified at their inception.
- Secondly, the court will decide whether it was reasonably related in scope to the circumstances which justified the interference in the first place.
- Arcuri fit the description of the robber given by the store clerk, the officers believed they were in the area into which the robber had run, and the robbery was freshly committed.
- The police were justified in their investigatory stop.

*Simmons v. State*, 781 N.E.2d 1151 (Ind. Ct. App. 2002).

- Court of Appeals concluded that police officer's interaction with Simmons did not constitute an investigatory stop.
- Officer simply approached Simmons in his driveway as part of his non-criminal investigation into a crash and abandonment of a vehicle in Simmons' ditch.
- Simmons was, therefore, not subjected to an investigatory detention at the time the officer detected the smell of an alcoholic beverage on his breath.
- The only thing the officer did to initiate the encounter was to activate his emergency lights. He did this simply to announce his presence and get Simmons' attention.
- Use of the lights in this circumstance was no more coercive than if the officer had called the defendant's name and asked to have a word with him.
- Simmons was free to terminate the conversation and go into his house at anytime.

- Denial of Simmons' Motion to Suppress was not error.